

**BEFORE THE PUBLIC SERVICE COMMISSION
OF UTAH**

IN THE MATTER OF:

The Application of Bresnan)	
Broadband of Utah, LLC for a)	
Certificate of Public Convenience)	Docket Number 07-2476-01 and 02
And Necessity to Operate as a)	
Competitive Local Exchange)	
Carrier in Utah)	

**DIRECT TESTIMONY
OF
ERIC ORTON**

**ON BEHALF OF THE
UTAH COMMITTEE OF CONSUMER SERVICES**

August 13, 2007

1 Q: **PLEASE STATE YOUR NAME, AND PARTY YOU REPRESENT FOR**
2 **THE RECORD.**

3 A: My name is Eric Orton. I am testifying on behalf of the Utah Committee of
4 Consumer Services.

5

6 Q: **WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

7 A: To present the Committee's position on Bresnan Broadband's Application
8 for a Certificate of Public Convenience and Necessity (CPCN) that was
9 filed with the Commission on February 5, 2007. Bresnan is seeking
10 permission to operate as a Competitive Local Exchange Carrier (CLEC) in
11 Vernal, Utah, an area now served by UBTA-UBET, a rural Incumbent
12 Local Exchange Carrier (ILEC).

13

14 Q: **HAVE YOU PARTICIPATED ON BEHALF OF THE COMMITTEE IN**
15 **THIS DOCKET?**

16 A: Yes. I have been monitoring this case from its inception before this
17 Commission.

18

19 Q: **WHY IS THE COMMITTEE FILING TESTIMONY IN THIS DOCKET?**

20 A: The Committee's statutory mandate is to assess the impact upon
21 residential and small commercial ratepayers of utility rate changes and
22 regulatory actions, and to advocate positions upon such rate changes or
23 actions most advantageous to a majority of these ratepayers. The

24 Committee believes that the Commission should consider the ratepayer
25 impact as a primary issue in this case.

26

27 Q: **HOW DOES THE COMMITTEE RECOMMEND THAT THE**
28 **COMMISSION VIEW THE BRESNAN APPLICATION?**

29 A: The Committee recommends that the Commission begin by evaluating the
30 Bresnan application in the context of the governing statutes and policy
31 objectives, keeping in mind that Utah's policy favors competition in the
32 telecommunications industry as a benefit to Utah customers. Thus, the
33 relevant points to consider are:

- 34 • Are there a minimum of 5000 lines in the ILEC territory?
- 35 • Is the CLEC capable of providing the service?
- 36 • Is the public interest best served by granting the application,
- 37 or does the public interest require that it be rejected?

38 Because there is no controversy over the first two questions, the
39 Committee will address only the third.

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41 Q: **WHAT IS THE RELEVANT POINT REGARDING THE PUBLIC**
42 **INTEREST THAT THE COMMITTEE WOULD LIKE THE COMMISSION**
43 **TO KEEP IN MIND?**

44 A: The Commission should judge CLEC applications based on the effect on
45 the telecom consumers. The question to ask is: Will granting a CPCN to
46 a CLEC improve telecommunication services? The Utah Legislature

47 declares that it is state policy that all residents and businesses have high
48 quality, affordable telecommunications services; that competition provides
49 wider customer choices; that regulatory policy should allow greater
50 competition; and, that competition in the telecommunications industry will
51 enhance the general welfare and encourage economic growth. This policy
52 is found in Utah Code Section 54-8b-1.1.

53

54 Q: **HOW DID THE COMMITTEE FRAME ITS ANALYSIS OF POTENTIAL**
55 **BENEFITS FROM COMPETITION?**

56 A: The Committee's analysis of Bresnan's application and responses to it are
57 focused upon the changing character of rural markets for communications
58 services of many kinds; wireless, cable, and internet. As rural markets
59 grow both in numbers of customers and demands for advanced services
60 by these customers, such as is occurring in UBTA-UBET's territory, the
61 Committee believes that the Commission's approach to competitive entry
62 into rural ILEC territories should concentrate on a wide analysis of the
63 benefits that such entry will bring to rural Utah. The Committee also
64 believes that before the Commission rules on any application to compete
65 in rural Utah, the Commission must have before it an analysis of the
66 impact upon the USF, statewide, as well as an assessment of the potential
67 value from having a CLEC's presence. This analysis can form the basis
68 from which to make a public interest determination.

69

70 Q: **HOW IS THE PUBLIC INTEREST DETERMINED?**

71 A: The Committee believes that the reasonable evaluation of these of the
72 public interest requires an evaluation of the potential benefits of
73 competition balanced by the potential for unreasonable impacts upon
74 ratepayer contribution to the USF.

75

76 Q: **WHAT IS THE COMMITTEE'S VIEW OF PUBLIC INTEREST?**

77 A: If more customers choose to switch providers, the impact from competition
78 on the USF increases. However, a higher switch rate is likely an
79 indication of greater perceived benefits from the new competition.

80 Therefore, in this case, it appears that as benefits from competition rise,
81 the impact to USF will also be greater. Therefore, these two aspects of
82 public interest will remain somewhat in balance. Nonetheless, it is
83 important to be assured that the USF impact is acceptable.

84

85 Q: **IS THE IMPACT TO THE USF ACCEPTABLE?**

86 A: The DPU has provided its range analysis and conclusion of the potential
87 USF impacts from Bresnan's entry into the Vernal market. The DPU's
88 analysis and conclusion appear objective and reasonable. Evidence to
89 the contrary appears to be based upon more subjective switch rate
90 projections. Further, switch rates as opponent's project support the
91 conclusion that the Vernal market is ready for and needs competitive
92 choices. Therefore, given that granting Bresnan's application supplies the

93 competition favored by Utah's policies, the DPU's conclusion
94 demonstrates a range of USF impacts that are acceptable.

95

96 Q: **WHAT ARE YOUR CONCLUSIONS?**

97 A: Bresnan meets the requirements to be a CLEC as outlined in Utah Code
98 Title 54. No party in this proceeding has contended they do not. UBTA-
99 UBET meets the requirement for an ILEC that is open for competitive
100 service as outlined in Utah Code Title 54. And the public interest
101 standard is met as described above.

102

103 Q: **IS THERE ANY VALID REASON THAT, FROM THE CUSTOMERS
104 POINT OF VIEW, BRESNAN SHOULD NOT BE GRANTED A CPCN AS
105 THEY APPLIED FOR?**

106 A: No.

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108 Q: **DOES THIS CONCLUDE YOUR TESTIMONY?**

109 A: Yes it does.